REMARKS

Claims 1 to 18 are pending in the present application and have been examined on their merits. By this amendment, claims 16 and 17 have been cancelled and claim 10 has been amended.

Claim Rejections

Claims 10 and 16 are rejected under 35 U.S.C. §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Claim 16 is also rejected under 35 U.S.C. §101 as claiming a recitation of a use without setting forth any steps involved in the process. This rejection is overcome by the cancellation of claim 16 and amendment of claim 10 as suggested by the Examiner.

By the present amendment, claims 16 and 17 have been cancelled. Accordingly, rejection of these claims (i.e., under 35 U.S.C. §112, second paragraph, and 35 U.S.C. §101 as applied to claim 16; and under 35 U.S.C. § 103(a) as applied to claim 17) are now moot.

The Applicant thanks the Examiner for suggesting that claim 10 directed to the limitation "said business objectives" should be dependent upon claim 2. By the present amendment, claim 10 is now dependent on claim 1. The Applicant believes that the rejection of claim 10 under 35 U.S.C. §112, second paragraph, should now be withdrawn.

Claims 1 to 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over d'Eon *et al.* (U.S. Pat. No. 6,006,197). This rejection is in error.

It is the Applicant's position that the invention is not made obvious by the d'Eon *et al.* patent. This patent, directed to a web advertising measurement system, does not disclose the parameters of the claimed invention. The Examiner notes that d'Eon *et al.* does not teach reacting to the evaluation found as a critical limitation of all of the Applicant's independent claims [c.f., claim 1(e), claim 13 (h), and claim 14 (e)]. The Examiner holds the position that it would be obvious to one of ordinary skill in the art at the time of the invention to use the teaching of d'Eon *et al.* to fill this void and react to evaluation by modifying, if necessary, marketing communications activity. The Applicant respectfully disagrees.

A *prima facie* case of obviousness must have some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings, a reasonable expectation of success, and the art reference or combined references must teach or suggest all the claim limitations. There is no teaching or suggestion of the limitations of the instant claims. d'Eon *et al.* does not arrive at Applicant's invention. The "gap" between Applicant's invention and the art cannot be filled by reasonably modifying d'Eon *et al.* or by the general knowledge of those or ordinary skill in the art. The teaching of d'Eon *et al.* is directed exclusively toward web-based marketing and does not contemplate or disclose the plurality of marketing communications activities disclosed in Applicant's invention, let alone disclose or suggest continuous interactivity and rapid reacting to marketing communications activity. Also, the prior art cited by the Examiner does not teach, suggest or inherently yield the asserted advantages and improved results of interactive rapid response marketing that are disclosed and presently claimed by Applicant. There is not the faintest motivation to do so. Hindsight reconstruction of Applicant's invention is improper and in fact has not been achieved. The cited art clearly does not suggest, provide motivation for, or arrive at Applicant's invention. Should Applicant's

independent claims (i.e., 1, 13 & 14 as amended) be found allowable, so also should claims dependent thereon be allowed.

In light of the discussion of art as related to the present invention, the Applicant respectfully submits that the prior art does not either suggest Applicant's invention or teach its critical elements. In addition, there is no suggestion or motivation, either in the d'Eon *et al.* reference or in the general knowledge of those skilled in the art, to modify d'Eon *et al.* with a reasonable expectation of success to arrive at the claimed invention. There is no teaching or suggestion of the limitations of the instant claims. The Applicant's continuously interactive rapid response marketing system and method for optimizing marketing communications activity is not only novel but unobvious. Accordingly, the Applicant request that the rejection under 35 U.S.C. §103(a) as applied to pending claims, be appropriately withdrawn.

In view of the above remarks responsive to the subject Office Action, the Applicant believes that the rejections under 35 U.S.C. §101, 35 U.S.C. §112, second paragraph, and 35 U.S.C. §103(a), as applied to pending claims, should be reconsidered and withdrawn. The claims as currently presented distinguish from the cited art and represent patentable subject matter. Reconsideration and allowance, being in order, are earnestly solicited. Should there be further issues, the undersigned would welcome a telephone call to facilitate their resolution.

Respectfully submitted,

DATE: 17 March 2004

By: _____

Thomas J. Monahan
Attorney for Applicant
Registration No. 29, 835
Monahan & Costello, LLC
4154 Madison Avenue
Trumbull, CT 06611
Tel: (203) 373-1919